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to Bell, Boyd & Lloyd LLC
our reference 1996P01499 US01

REMARKS

The present remarks are in response to the Office Action entered in the above identified application and mailed on October 24, 2003. Applicant acknowledges with appreciation the Examiner's indication that Claims 8, 9, 13-23 and 25.

This case is nearly coming to a conclusion and we need only resolve one final issue, namely the rejection of claim 24 under 35 USC §103(a). To that end, Applicant believes that the Claim 24 as now amended clarifies the inventive features over the cited art. Claim 24 is amended for clarification purposes.

It has already been recited in Claim 24 that the "second scheduler for scheduling transmission of the data packets to precede the first scheduler depending on the queue identifier". Thus, whether the second scheduler precedes the first or not depends on the queue identifier. What happens is that the control data A, B is sent to the respective schedulers S1, S2. The control data instructs the schedulers which one is to operate on the data packets first, that is, to limit the data packet (cell rate) transmission. See pages 6, lines 25-28 and 7, lines 1-5. As indicated, at page 6, lines 25-58, when it is determined that the cell rate is not to be limited, the scheduler S2 "bypasses" the first scheduler S1. Thus, the second scheduler S2 is operated to schedule the cell rate before, or "preceding", the scheduling of the first scheduler S1. It should be clear from the specification, that "bypassing" means a logical bypassing, that the decision of which scheduler S1 or S2 is determined by the control data.

In order to remove any doubt what is meant in claim 24 by the second scheduler precedes the first dependent on the queue identifier, and thus in effect to emphasize those features which are inventive over the cited art, claim 24 is amended to express this more clearly, as follows:

" that is when the information indicates that the transmission rate is to be limited at the upper rate the second scheduler schedules the cell rate for the data packets before the first scheduler, and when the information indicates that the transmission rate is not to be limited at the upper rate the first scheduler schedules the cell rate for the data packets before the second scheduler"

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There is no such dependency in Hayter. Hayter shows that his arrangement of schedulers is static. See his Fig. 2, which clearly shows his sustainable cell rate calendar 30 (lower transmission rate S1) preceding his peak cell rate calendar 32 (upper transmission rate scheduler S2). There is no "logical" rearrangement of Hayter. He states that the "cells leaving the sustainable rate calendar 30 (scheduler S1) are checked against the table values for the peak cell rate", col. 3, lines 44-49, which is done in his peak cell rate calendar (second scheduler S2). In other words, his figure really shows the data being transmitted from his first scheduler S1 to his second S2. Besides this, he states in his abstract and several other places (col. 3, lines 18-19, lines 44-46) that his scheduler S1 is in series with his scheduler S2, that is his first S1 precedes his second S2.

Applicant does agree with the Examiner that a reference need not show all the embodiments and may cover others not shown. But we ask the Examiner to kindly consider that Hayter describes the exact opposite arrangement than that claimed. It would not be just for the patent office to read an exact opposite arrangement into reference than that described by that reference.

In conclusion, we request the Examiner to reconsider his position concerning claim 24 in light of the clarifying amendments.

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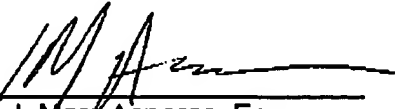
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If any additional fees are required in connection with this response they may be charged
to deposit account no. 19-2179.

Respectfully submitted,

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